

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES**

**IN THE MATTER OF:**

████████████████████  
██  
██

Reg. No.: 2014-34847  
Issue No(s): 3005  
Case No.: ██████████  
Hearing Date: June 12, 2014  
County: Saginaw (00)

**ADMINISTRATIVE LAW JUDGE:** Eric Feldman

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a three-way telephone hearing was held on June 12, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of  
 Family Independence Program (FIP)     State Disability Assistance (SDA)  
 Food Assistance Program (FAP)     Child Development and Care (CDC)  
 Medical Assistance (MA)  
benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for  
 Family Independence Program (FIP)?     State Disability Assistance (SDA)?  
 Food Assistance Program (FAP)?     Child Development and Care (CDC)?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on April 17, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG  has  has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of  FIP  FAP  SDA  CDC  MA benefits issued by the Department.
4. Respondent  was  was not aware of the responsibility to report changes in residence.
5. Respondent  had  did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2012 to July 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$2,200 in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$2,200.
9. This was Respondent's  first  second  third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and  was  was not returned by the US Post Office as undeliverable.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to

MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
  - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, **or**
  - the total OI amount is less than \$1000, **and**
    - the group has a previous IPV, **or**
    - the alleged IPV involves FAP trafficking, **or**
    - the alleged fraud involves concurrent receipt of assistance (see BEM 222), **or**
    - the alleged fraud is committed by a state/government employee.

BAM 720 (May 2014), pp. 12-13.

### **Intentional Program Violation**

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (May 2014), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department that he no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state.

To be eligible, a person must be a Michigan resident. BEM 220 (January 2012), p. 1.

For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1.

For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (April 2012), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2012 to July 31, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report changes in residence and that he intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's application dated July 20, 2010, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 20-35 and see also applications dated September 13, 2011 and March 16, 2012, pp. 36-79. The Department also presented a redetermination dated August 9, 2012, which occurred before the alleged fraud period. See Exhibit 1, pp. 80-85. Respondent also reported a Michigan address, however, it should be noted that the his transaction history showed out-of-state purchases at the time this form was submitted. See Exhibit 1, pp. 12-13. It should also be noted that the Redetermination indicated that he has been visiting family over the past few weeks and will not be home until September (2012). See Exhibit 1, p. 83.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1. The FAP transaction history showed that from July 16, 2012 to July 22, 2013, Respondent used FAP benefits issued by the State of Michigan out of state in Ohio. See Exhibit 1, pp. 12- 16. It should be noted that two transactions were conducted in Michigan on January 20, 2013. See Exhibit 1, p. 15.

Third, the Department presented out-of-state documentation from Ohio dated April 2, 2014, which showed that Respondent had an active Ohio FAP case effective August 2013. See Exhibit 1, p. 17.

At the hearing, Respondent testified that he did not intentionally withhold information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility. Respondent testified that after he was released from prison he moved in with his mother. At a later date, Respondent testified that his significant other moved in with him in Michigan. Then, Respondent testified that his significant other moved out of state to Ohio. Respondent testified that he would basically visit his significant other during the alleged fraud period for weeks at a time. However, Respondent testified that he was a Michigan resident the entire alleged fraud period because he did not move any of his belongings to Ohio.

Additionally, Respondent testified that only his significant other had transportation and she would take him to purchase food in Ohio (only for himself). Respondent also indicated that he would go back and forth to Michigan during the alleged fraud period. Finally, Respondent testified that he permanently decided to become a resident of Ohio on or around August 2013 and that is why he applied for benefits in Ohio at that same time. Respondent testified that he contacted his DHS worker in July 2013 to close his FAP benefits because he decided to leave the State of Michigan.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

First, the Department did not present evidence to establish Respondent's intent during the alleged IPV usage, other than the FAP transaction history. However, this evidence failed to show that Respondent intentionally withheld information concerning an out-of-state move during the alleged fraud period. Moreover, even though out-of-state usage began at the time the redetermination (dated August 9, 2012) was submitted, this document occurred before the Department's alleged fraud period. See Exhibit 1, pp. 80-85.

Second, Respondent credibly testified that he did not intentionally withhold information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility. Even though the FAP transaction history shows out-of-state usage, Respondent credibly testified that he did not intentionally withhold any information.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. A disqualified recipient remains a

member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 2013), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

### **Overissuance**

As stated previously, the Department failed to show that Respondent purposely failed to report a change in residency to continue receiving FAP benefits from Michigan. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (May 2014), p. 1.

To be eligible, a person must be a Michigan resident. BEM 220, p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. At the hearing, the Department presented Respondent's FAP transaction history that showed that from July 16, 2012, to July 22, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Ohio. See Exhibit 1, pp. 12-16. Even though Respondent testified that he was a Michigan resident the entire OI period, the transaction history showed that for more than 10 months, he conducted all the transactions in Ohio (other than two). See Exhibit 1, pp. 12-16. Based on this information, it is persuasive evidence that Respondent was not a Michigan resident. The evidence shows that the most probable explanation is that Respondent lived outside of Michigan.

Moreover, FAP group composition policy states a person who is temporarily absent from the group is considered living with the group. BEM 212, p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2. The policy is not directly applicable to residency. However, again, the FAP transaction history shows that Respondent was using benefits out-of-state for more than thirty days. This established that Respondent is not temporarily absent from his group and he was not eligible for FAP benefits. Therefore, a client error is present in this situation because Respondent failed to notify the Department of his change in residency. See BAM 715, p. 1.

Applying the above standard and in consideration of the out-of-state use that began on July 16, 2012, the Department determined that the OI period began on September 1, 2012. See Exhibit 1, pp. 3 and 12. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from September 2012 to July 2013, which totaled \$2,200. See Exhibit 1, pp. 18-19. Thus, the Department is entitled to recoup \$2,200 of FAP benefits it issued to Respondent from September 1, 2012 to July 31, 2013.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department  has  has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent  did  did not receive an OI of program benefits in the amount of \$2,200 from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$2,200 in accordance with Department policy.



**Eric Feldman**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: June 19, 2014

Date Mailed: June 19, 2014

**NOTICE:** The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

2014-34847/EJF

EJF/cl

cc: [REDACTED]  
[REDACTED]  
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